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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1173rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 July 1992, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1173/Add.1.

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Comments on the initial report of the Republic of Korea (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the draft comments on the initial report of the Republic of Korea, as prepared by Mr. Herndl.

Paragraph 4

2. Mrs. HIGGINS said that the phrase "constituted a positive step towards the settlement of the situation", at the end of the first sentence, referred to the relations between the two Koreas. She did not feel that the Committee was in a position to say that the Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation constituted a positive step towards such a settlement. The only relevant point was whether it would serve as a background to an improvement of the human rights situation. She proposed that the wording "appears to constitute a positive step" should be used instead.

3. Mr. SADI said that the phrase "at the time of the submission of the report" should be deleted. The relations between the two Koreas constituted an ongoing situation. Moreover, since it was not clear who it was that perceived relations between the two Koreas as a decisive factor, that reference should also be deleted. The sentence would then run: "The Committee notes that the relations between the two Koreas appear to affect the human rights situation in the Republic of Korea".

4. Mr. EL SHAFEI endorsed Mr. Sadi's suggestion. He felt that describing relations between the two Koreas as one of the most decisive factors affecting human rights was too strong a statement for the Committee to make. There were many other factors involved. He also endorsed Mrs. Higgins' proposal regarding the second sentence.

5. Mr. HERNDL, referring to the first sentence, asked whether the Committee could agree to the expression "were still perceived as an important factor affecting the human rights situation in Korea".

6. The CHAIRMAN said that he would prefer the wording suggested by Mr. Sadi. He proposed, therefore, that the sentence should run: "The Committee notes that the relations between the two Koreas appear to be affecting the human rights situation in the Republic of Korea". If he heard no objection, he would take it that the Committee adopted that wording as well as the amendment to the second sentence proposed by Mrs. Higgins.

7. It was so decided.

Paragraph 5

8. Miss CHANET said that the last sentence, referring to article 37 of the Constitution, was not clear. She felt that the phrase "are not to be neglected" should be replaced by wording to the effect that the article guaranteed various rights and freedoms not enumerated therein.

9. Mr. SADI thanked Mr. Herndl for the effort he had put into preparing the draft. He was uneasy, however, about using the word "cover" in the first sentence. He proposed instead the word "incorporate".

10. Mr. HERNDL wondered whether there was an obligation on the part of States to incorporate all the provisions of the Covenant in their Constitutions. They were, of course, obliged to provide safeguards, but how they did so was for them to decide. While he would not insist on the word "cover", "incorporate" seemed to him to go too far.

11. The CHAIRMAN said that he was informed by the Secretariat that the expression referred to by Miss Chanet was the exact wording used in the Constitution. The Committee could therefore retain it. He took it that the Committee wished to adopt paragraph 5 as amended.

12. It was so decided.

Paragraph 6

13. Mr. EL SHAFEI suggested that the word "international" should be deleted from the second sentence. He would prefer the paragraph to speak only of the "particular" situation of the Republic of Korea. He was also uneasy about the linkage between the use of excessive force by the police and the National Security Law. The use of excessive force by the police was not authorized by law but took place outside it. A reference to the excessive use of force could be made at a later stage, rather than immediately after the reference to the interpretation of the National Security Law.

14. Mr. SADI said that he too found the use of "international" inappropriate. The Committee could perhaps say something to the effect that the particular regional situation in which the Republic of Korea found itself affected its security. He was also uneasy about the passage referred to by Mr. El Shafei. The Committee could perhaps use language on the lines of "somewhat vague terms nullifying certain basic articles of the Covenant that cannot be derogated from even in a State emergency".

15. Mrs. HIGGINS took it that the word "sanctioning" in the fourth sentence meant prohibiting such acts. The examples given, however, related not to prohibited acts by individuals but to acts committed by the authorities. She suggested that the sentence might end "may result in prohibiting acts that may not be truly dangerous for State security and in allowing responses thereto unauthorized by reference to the Covenant". The next sentence could go on to express the Committee's concern and to give examples. She agreed that the use of excessive force by the police was not a permitted response under the National Security Law and should therefore be mentioned separately.

16. Mr. HERNDL said that he agreed on the advisability of deleting the word "international" from the second sentence. He thought Mrs. Higgins' proposed addition to the fourth sentence would take care of the point made by Mr. Sadi. He suggested that the remaining sentences could be made into a separate paragraph, the words "In that context" being deleted.

17. The CHAIRMAN took it that the Committee agreed to adopt paragraph 6 as amended.

18. It was so decided.

Paragraph 7 (new paragraph 8)

19. Mr. AGUILAR URBINA said that the use of the word "atraco" in the Spanish text was incorrect. The offence referred to was robbery with aggravating circumstances, not simple robbery.

20. Mr. SADI said that the phrase "seems incompatible" in the third sentence should read "is incompatible". He also felt that the problems relating to article 15 of the Covenant should be spelt out and the high number of political prisoners emphasized rather than mentioned only in passing.

21. Miss CHANET endorsed Mr. Sadi's comments. The problems relating to article 15 of the Covenant were those that had arisen during the examination of the report. The Committee's concern was not that the penalties for offences were too heavy but that the offence and the appropriate penalty should be specified in law. The problem was the application of the principle of legality.

22. Mr. HERNDL supported Mr. Sadi's first suggestion. The reference to the high number of political prisoners should become a reference to prisoners of conscience and should be inserted as the first element of the areas of concern enumerated in the last sentence. He did not think enumeration could be avoided altogether. If Miss Chanet could propose a short formula for the problems relating to article 15, he was ready to accept it.

23. The CHAIRMAN said he took it that Miss Chanet wished to replace "article 15 of the Covenant" by the words "the principle of legality of penalties". If he heard no objection, he would take it that the Committee approved the paragraph as amended.

24. It was so decided.

Paragraph 8 (new paragraph 9)

25. Mr. SADI said that, after the word "Covenant" in the seventh line, the words "and not to derogate from certain basic human rights as outlined in article 4, paragraph 2" should be added.

26. Mr. MULLERSON suggested that the words "and the First Optional Protocol" should be inserted after "Covenant" in the seventh line.

27. Mr. ANDO said that it was not only the rights mentioned in article 4, paragraph 2 of the Covenant that were affected by the National Security Law but all rights under the Covenant. He felt that the Committee should not specify them.

28. Mr. WENNERGREN agreed that the rights should not be specified.

29. Mr. AGUILAR URBINA said that he was troubled by the reference in the third sentence to article 15 of the Covenant. He felt the reference should be to the provisions of article 6.

30. The CHAIRMAN said that there was an error in the Spanish text. There should be a semi-colon, instead of a comma, after "la pena de muerte", separating it from the reference to article 15. If there was no objection, he would take it that the Committee wished to adopt the paragraph, as amended.

31. It was so decided.

32. The draft comments as a whole, as amended, were adopted.

Comments on the third periodic report of Mongolia

33. The CHAIRMAN invited members to consider the draft comments of the Human Rights Committee on the third periodic report of Mongolia, as prepared by Mr. Ando.

Paragraph 1

34. Paragraph 1 was adopted.

Paragraph 2

35. Mr. MULLERSON said that he was troubled by the lack of precise details concerning the draft laws and decrees cited in the course of the consideration of the report. The Committee had not even been informed of the content of those laws. He therefore proposed that the phrase "lack of precise details concerning them" in the last sentence should be replaced by "lack of information as to their content".

36. Mrs. HIGGINS endorsed that proposal. She was concerned for her part by the reference to the dialogue with the delegation as "useful and open". She had indicated, in her concluding remarks on the Mongolian report, that the repeated failure to provide more precise information had made the dialogue of limited use. She proposed that the words "and open" should be deleted.

37. The CHAIRMAN said that he took it that the Committee wished to adopt paragraph 2 as amended.

38. It was so decided.

Paragraph 3

39. Mr. ANDO said that Mr. Wennergren had already suggested to him that the phrase "a firmer legal basis", in the last line of the paragraph, should be replaced by "a firm legal basis". He felt, however, that there was already to some extent a legal basis which the Committee wished to see made firmer and he would therefore prefer to retain the original wording.

40. The CHAIRMAN said that he took it the Committee wished to adopt paragraph 3 without change.

41. It was so decided.

Paragraph 4

42. Mr. ANDO suggested that, in the last sentence, the words "as a result" should be replaced by "this is the reason why".

43. Miss CHANET asked Mr. Ando why a shortage of funds had been singled out as the reason for the failure to establish a new system of democratic institutions and procedures. There were many reasons and the Committee could obviously not list them all.

44. Mr. ANDO said the shortage of funds had been specifically referred to in the dialogue with the Mongolian delegation. He would not, however, oppose an amendment to the third sentence.

45. Mr. SADI said that the first sentence of the paragraph appeared to link economic development to the application of the Covenant in a way that amounted to saying that Mongolia was excused from full application on grounds of poverty. In his view, the International Covenant on Civil and Political Rights could be implemented independently of the state of economic development, although the economic situation was clearly relevant to the International Covenant on Economic, Social and Cultural Rights.

46. Mr. HERNDL thought that some reference must be made to the transitional period through which Mongolia was passing. The Committee was not saying that it excused Mongolia from its duty to implement the Covenant but only that the shortages from which it was suffering were among the difficulties it faced in so doing. He suggested that the phrase "shortage of funds" might be replaced by "shortage of resources".

47. Mr. EL SHAFEI said that he did not share Mr. Sadi's concern. It was not a question of economic development or policy standing in the way of implementation of the Covenant; it was merely a question of a lack of funds to allocate for that purpose.

48. He did not think there was any reason to believe that events were moving "very quickly" in Mongolia as was stated in the last sentence of the paragraph, and that phrase should be omitted.

49. Mrs. HIGGINS said the Committee could hardly ask States about their difficulties and then decide not to mention them in its comments for fear of giving the impression that there were any factors that could be admitted to impede the implementation of the Covenant. She thought that all members of the Committee had felt that Mongolia was facing genuine economic and financial problems, which were slowing the process of implementation. What the Committee certainly should not do was to countenance economic excuses given by States when it was not convinced that they were justified.

50. Mr. PRADO VALLEJO said that, while he could understand that the implementation of the International Covenant on Economic, Social and Cultural Rights had to be, as stated in its article 2 (1), progressively achieved, guarantees of many of the basic rights under the International Covenant on Civil and Political Rights were not dependent upon the availability of funds although some activities such as training did, of course, need funding. What was usually required was the drafting of legislation, and there any impediments were institutional. While he appreciated that Mongolia was making efforts to implement the Covenant the Committee, as paragraph 4 stood, seemed to be accepting that economic problems hindered respect for the rights it enshrined. Third world countries with serious economic difficulties might seize upon such statements to excuse themselves from improving their human rights record. He was unhappy about the whole paragraph as it stood.

51. The CHAIRMAN suggested that, in order to avoid repeating the reference to shortages, the first and third sentences should be combined. The paragraph, leaving aside for the moment the final sentence, would read: "The Committee notes that widespread shortages due to economic dislocations accompanying the transitions presently under way in the country have hindered the full application of the Covenant and the establishment of a new system of well-functioning democratic institutions and procedures. For example, lack of adequately trained staff in the Mongolian Legal Service has adversely affected efforts to reform the judiciary." If his suggestion was accepted, discussion could focus on the wording of the last sentence of the paragraph.

52. Mr. MULLERSON said that he did not think that the draft excused the Mongolian Government from implementing the Covenant: it merely spoke of difficulties which were hindering full application. Although economic factors did not bear so directly upon civil and political rights as they did upon economic, social and cultural rights, they undoubtedly created an environment which was not conducive to full application of the Covenant.

53. The last sentence of the paragraph could be deleted, as reference had already been made to the lack of sufficient information.

54. The CHAIRMAN asked whether the Committee was prepared to adopt paragraph 4 subject to the rewording he had suggested and to the deletion of the last sentence.

55. It was so decided.

Paragraph 5

56. Mrs. HIGGINS, referring to the fourth and fifth sentences of the paragraph, said that the issues raised were not only of limitations to fundamental rights but also of prior requirements imposed. She proposed that the two sentences should be amended to read: "In regard to a number of fundamental rights recognized in the Covenant, some requirements and limitations presently in force in Mongolian law are so broad and numerous as severely to restrict the effective exercise of such rights in actual practice. This is true, for example, in regard to the criteria for declaring a state of emergency, the requirement of prior permission for holding public meetings and the criteria for refusing such meetings, the requirement that political parties should be registered, the criteria for refusing registration, and the criteria for refusing an application for a visa or passport."

57. Mr. MULLERSON suggested that the term "exit visa" should be used instead of "visa".

58. The direct applicability of the Covenant in national law clearly had great advantages, and its incorporation was particularly easy where States were in the process of adapting their legal systems to meet new requirements. He thought they should be helped in so doing, and noted that no objection had been expressed by the delegation that had appeared before the Committee.

59. Perhaps the phrase in the last sentence of the paragraph relating to use of the death penalty could be amended so as to refer to the number of executions carried out rather than to the number of times that the penalty had been carried out.

60. Mr. ANDO said that he was willing to accept the deletion of the word "directly" in the second sentence and a rewording of the last sentence along the lines suggested by Mr. Müllerson.

61. Mr. El SHAFEI said that he did not agree that the status of old laws and procedures was unclear, as was stated in the third sentence of the paragraph. He suggested that the words "unclear status and" should be replaced by "continuing".

62. The CHAIRMAN asked whether the Committee was prepared to adopt paragraph 5 as amended.

63. It was so decided.

Paragraph 6

64. Mr. SADI thought that there was a contradiction between asking States parties to apply the Covenant, as the Committee was doing in paragraph 6, and the references it had made in paragraph 4 to economic conditions as impediments to application. A State like Mongolia could surely argue that its economic difficulties were preventing it from applying the Covenant in full.

65. Mr. MULLERSON, disagreeing, said that, as he understood it, nothing in paragraph 4 excused non-compliance with the Covenant. The difficulties facing certain States were objective and had to be mentioned.

66. He proposed that the phrase "are more closely incorporated" in the first sentence of paragraph 6 should be amended to read "should be fully incorporated".

67. Mr. EL SHAFEI saw no contradiction between paragraphs 4 and 6. Paragraph 4 spoke of factors that had hindered the full application of the Covenant in the past; paragraph 6 seemed to him to lead on from paragraph 4 in that it referred to the provision of adequate training in human rights norms, the need for which had been mentioned in the earlier paragraph.

68. Mr. PRADO VALLEJO said that while he understood the explanations given by Mr. Müllerson and Mr. El Shafei, which no doubt represented the true spirit of paragraph 4, the structure and wording of that paragraph as they stood would make it possible for States to invoke economic difficulties as a pretext for non-compliance with the Covenant. What Mr. Sadi had said about the paragraph expressed exactly what he himself thought.

69. Mr. SADI said that the economic difficulties mentioned were not merely things of the past; they still existed in countries like Mongolia and could be given as reasons for non-compliance with the Covenant. It seemed to him that, if paragraph 6 were to be brought into logical accord with paragraph 4, some qualification on the lines of "as soon as economic dislocations have been overcome" would have to be incorporated, and that he did not think the Committee would wish to accept.

70. Mr. PRADO VALLEJO said that, if one were to imagine that the Covenant stated that lack of resources made its application impossible, and it was agreed that its provisions could be only gradually implemented, the effect would be much the same as what the Committee had accepted with paragraph 4 in its present wording.

71. Mr. NDIAYE said that it was an inescapable fact that economic factors, for example an economic crisis, were bound to have effects upon the enjoyment of human rights.

72. Mr. LALLAH, referring to a quite distinct point, proposed that the words "In undertaking these recommendations" at the beginning of the last sentence of paragraph 6 should be amended to read "In implementation of these recommendations".

73. The CHAIRMAN remarked that the word "shortages" in the first sentence of paragraph 4 seemed to be the major stumbling block. He suggested that it should be deleted so that there was reference only to "widespread economic dislocations".

74. It was so decided.

75. The CHAIRMAN asked whether the Committee was prepared to adopt paragraph 6 with the amendments suggested.

76. It was so decided.

77. The draft comments as a whole, as amended, were adopted.

Comments on the second periodic report of Peru (continued)

78. The CHAIRMAN said that Mr. Aguilar Urbina, who was responsible for drafting the comments of the Committee on the second periodic report of Peru, had prepared a second draft. The text, which had been circulated, was for the moment available only in English.

79. Mr. MULLERSON suggested that the draft might be orally introduced, but that it would be difficult to enter into a discussion of substance without the necessary language versions.

80. Mr. LALLAH suggested that paragraphs to which no substantive changes had been made might be examined.

81. Mrs. HIGGINS and Mr. PRADO VALLEJO said that it was essential to have the draft in English, French and Spanish in order to consider the substance properly, especially where changes had been introduced in the initial version.

82. Mr. AGUILAR URBINA said that some 6 out of a total of 14 paragraphs contained substantive changes.

83. The CHAIRMAN suggested that, under the circumstances, it might be advisable to postpone consideration of the draft comments, pending translation, which would be done as speedily as possible.

84. It was so decided.

The public meeting rose at 4.40 p.m.